

04.03.2025

Present: Sh. Alok Pandey and Sh. Shekhar Sharma Ld. Counsels for plaintiff through VC.
Sh. S.K. Sharma Ld. Counsel for defendant through VC.

It is submitted by Ld. Counsel for defendant that he has already filed affidavit for admission-denial of documents on e-filing portal and he will file hard copy on or before NDOH. Copy supplied.

Ld. Counsel for plaintiff submits that the defendant has not filed any document due to this reason there is no requirement of affidavit for admission-denial of documents on behalf of plaintiff.

It is submitted by Ld. Counsel for defendant that defendant has denied all the documents except GPA dt. 24.11.2022.

On the basis of pleadings of parties, the following issues are hereby framed.

ISSUES

- 1. Whether the plaintiff is entitled for recovery of possession of property bearing No. C-14, Situated at the Abadi of Madhu Vihar in area of Village Mandawali Fazalpur, Illaqa Shahdara, Delhi-92? OPP**
- 2. Whether the plaintiff is entitled for decree of permanent and mandatory injunction against the defendant, as prayed for? OPP**
- 3. Whether the plaintiff is entitled for damages as prayed for? OPP**

4. Whether the present suit is not maintainable in its present form and liable to be dismissed u/o 7 rule 11 CPC ? OPD
5. Whether the present suit is counter blast to the FIR No. 44/23, PS Madhu Vihar, u/s 448/380/34 IPC?OPD

No other issue arises nor pressed for nor onus of proof objected to. Both the sides to file their list of witnesses within 15 days from today. Plaintiff to file her evidence by way of affidavit with advance copy to the opposite side.

At this stage, it is submitted by counsel for plaintiff that it would be appropriate if an advocate be appointed as Local Commissioner in the present suit for recording of evidence. Hence, **Advocate Mr. Bhupesh Dev, Mobile No. 9968563535, Enrolment No. D-9733/2023, Office: 586, Pocket-5, Mayur Vihar Phase-I, Delhi 91, is hereby appointed as LC in this case for recording of evidence.**

The terms of the assignment of the case are as under –

A. Assignment of case by Court for recording of evidence

1. Schedule of Evidence Evidence shall be recorded preferably on the same day fixed by Local Commissioner. If it is not possible on the same day, then on the next day. Evidence shall continue on day-to-day basis, till conclusion. Any alteration in schedule for recording of evidence if needed shall be decided by the Ld. Commissioner as per convenience of all concerned.
2. Sharing Copy of Affidavit in Chief An advance copy of affidavit shall be supplied to opposite party.
3. Production of Documents for Cross-examination In case the opposite side is desirous of production of any document by the

witness or any other entity for the purpose of cross-examination, an application requesting the same shall be moved before this Court at the earliest.

B. Recording of evidence by the Commissioner-

1. Place and Time Ld. Commissioner shall record evidence only at the place convenient to both sides and in case of no consensus, at the Karkardooma Court Complex. Evidence shall be recorded between 10.00 AM to 5.00 PM.
2. Oath to Witnesses Ld. Commissioner shall give oath to the witnesses under examination as a delegate of the Court as per Oaths Act.
3. Chronology of Recording Ld. Commissioner shall proceed to record evidence of litigating party first before examining any other witnesses.
4. Recording of Evidence The evidence shall be preferably typed on a computer or in case of nonavailability shall be neatly hand written.
5. Time Frame Ld. Commissioner shall conclude the recording of evidence preferably on the same day or within shortest time possible but not later than within 45 days of assignment of a case, which is extendable by another 30 days in case the evidence is not concluded despite best efforts as per Order 18 Rule 4 CPC.
6. Comfortable Sitting Space All the witnesses and their Ld. Counsel shall be provided comfortable sitting space.
7. Exhibition of Documents Ld. Commissioner shall exhibit all the documents sought to be proved by a party on record. In case of any objection to exhibition of the documents by the either side, the

objection shall be recorded in some detail and left open with an assurance that mere marking of such exhibits will not be treated as conclusive proof thereof and that admissibility of such document shall be decided by the referral Court at final stage.

8. Original Documents to be Retained by Parties Ld. Commissioner shall make an observation in the record of evidence of all original documents produced and he shall sign the exhibits with an endorsement OSR wherever necessary.
9. English Language Ld. Local Commissioner, shall proceed to record evidence in English language only.
10. Adjournments Once started, the cross-examination shall be continued on day-to-day basis. In case of any hardship viz. ill health etc. the case can be deferred for a day or two not later than three days. If witness of a party is present and is available for examination in chief and cross-examination but opposite party or their Counsel is not available for evidence, only one adjournment for a witness may be granted by LC subject to the condition that cost of hearing of that particular day is to be borne by the party who is seeking adjournment and that too if LC is satisfied that there are reasonable grounds for seeking adjournment for evidence that particular day.

No second adjournment for cross examining of the same witness shall be granted by LC in any circumstances. If no adjournment is sought and opposite party is absent, the LC shall close the right of cross examination of that particular witness and proceed further with evidence as per law.

- 11.QuestionAnswers On the request of Id. Counsel cross examining the witness, portions of deposition may be recorded in question-answer form and questions shall be numbered for each witness.
- 12.Recording of Objections All the objections raised during cross examination/reexamination shall be recorded in the deposition under titled objections and shall be left open for the decision of the Court at the stage of final arguments. Witness shall not refuse to the answer the question raised.
- 13.Questions to be allowed In case Id. Commissioner finds any question not related to the fact and issue, he shall record his objection but shall allow the question to be put and witness must answer.
- 14.Assisting the Witness In case witness is unable to understand the question put to him, Id. Commissioner shall elaborate the same in an easy-to-understand manner in an impartial way.
- 15.No Third Person Intervention Id. Commissioner shall ensure that the witness is not assisted by his Id. Counsel or any other third party while under cross-examination.
- 16.Recording of Demeanor of Witness Id. Commissioner shall record the demeanor of the witness where ever it is found pertinent and necessary for sharing with the Court.
- 17.Witness to sign all pages Id. Commissioner shall obtain signatures of both the sides on each and every page of recording of evidence apart from signing them himself.
- 18.Copy of Evidence All interested parties shall be provided uncertified copy of the evidence recorded, free of cost.

19. Safe keep of Original Deposition Ld. Commissioner shall keep the original depositions in his safe custody till such time they are filed in the Court in original upon completion of each witness individually.
20. Miscellaneous Proceedings Ld. Commissioner shall maintain a miscellaneous proceeding sheet for each day of work and shall submit it in the Court with the report.
21. Hostile Witness In case a witness is sought to be declared hostile, then Ld. LC shall refer both the parties to Court within three days for exercising powers U/s. 154 Evidence Act.

C. Summoning of Official Witnesses-

1. Summons from the Court In case a litigating party is desirous of summoning an official witness, it shall obtain summons from the Court with an endorsement that witness shall appear before Ld. Commissioner for recording of evidence on scheduled date, time and place.
2. Diet Money Diet money shall be paid to such witness by summoning party as per rules.

D. Remuneration of Ld. Commissioner-

1. Quantum In terms of Order 18 Rule 4 CPC the remuneration for the purposes of Commissioner shall be fixed by the Court.
2. Mode of Payment Such remuneration shall be paid by the party directly for each day's work either by way of cash, cheque or draft against due receipt.
3. Cost to Parties Both parties shall bear the cost of recording of their respective evidences.

4. Fee to be paid Remuneration fee for recording of evidence is fixed at **Rs.5,000/ per witness**, which shall exclude the cost of typing, hiring of a typist, if any, and supply of copy of deposition. The cost of typing, hiring of a typist shall be borne by the respective party. Ahlmad is also directed to remain present with the judicial file when the Ld. LC records the evidence of witnesses. For the same, the fees of Ahlmad i.e. Rs.500/- shall be paid by the respective party for each date.

Endeavour be made by Ld. LC and Ld. counsels for both the parties to complete the recording of evidence of each witness on the first day itself. In case, the recording of evidence is adjourned, the further remuneration of Rs.3,000/ per day be paid to Ld. LC for each subsequent day.

5. To be added as Litigation Cost Such payments shall be redeemable as cost of litigation at the end of the suit.
6. LC Fees on days of adjournment Though fees of LC is to be borne by the parties as discussed above, however, if before LC, no effective hearing takes place due to absence of one party or adjournment is sought by one party, the cost of LC of that particular day shall be borne by the said party who has sought adjournment or who is responsible for the ineffective hearing of that particular day.

It is further clarified that if any party wishes to cancel the date, they will inform the LC three clear days in advance regarding the same date in writing through email and by way of telephonic message also. If three clear days advance notice is not

given, the fee of the LC shall be treated as cost of adjournment for that day.

Further if any witness has been summoned through the Court for any particular day before LC, LC shall not cancel the date for that particular day as the witnesses have been summoned and accordingly proceed as per Law and get examination and cross examination conducted. If a witness is coming from outside Delhi and same is mentioned in previous order sheet, then no adjournment shall be allowed by LC without prior consent on behalf of the said witness.

E. Judicial intervention during recording of evidence-

1. Parties to Cooperate It is expected that both sides will cooperate with Ld. Commissioner as well as each other and record evidence in a peaceful manner.
2. Dissolution of stalemate In case of any conflicting circumstances, they shall resolve issues at their own level with the active help of Ld. Commissioner.
3. Court Intervention However, in case of any unforeseen situation requiring judicial intervention, Ld. Commissioner shall fix date and time for joint appearance of both sides before the Court for removal of any such impediment.

F. Miscellaneous Applications-

1. Moving the Application In case either of the parties is desirous of moving any miscellaneous application viz. amending of pleadings, interim injunction etc. they shall share an advance

copy with the opposite side and reply thereof, if any, shall be prepared within seven days.

2. Date of Hearing Upon receipt of reply, both the sides shall get the application fixed for disposal in the Court in with the help of Reader of the Court and shall not wait till next date fixed for hearing.
3. Evidence not to be stalled It is clarified that, unless Ld. Counsel is of the view that the application is such that evidence cannot be recorded before its disposal, the recording of PE/DE shall continue unabatedly.

Both the parties are directed to appear before Ld. Local Commissioner for recording of evidence on 20.03.2025 at 2.00 PM. Thereafter, Ld. Local Commissioner shall give the dates as per the consensus of parties. However, in order to expedite the matter, Ld. Local Commission shall make efforts to record evidence on daily basis.

Put up for report of Ld. LC on conclusion of evidence by **05.05.2025**

Copy of this order be given Dasti to counsels for both the parties as well as be sent to Ld. LC.

(Pooja Jain)
District Judge-03/NB
East/KKD Courts/Delhi
04.03.2025